No. 82-2112

In the Supreme Court of the United States

RAMON RUIZ,
Petitioner,

v.

CRISTO REY COMMUNITY CENTER, et al.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

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QUESTION PRESENTED

DID THE SIXTH CIRCUIT COURT OF APPEALS VIOLATE PLAINTIFF'S RIGHT TO A JURY AND/OR FAIL TO PROPERLY APPLY ESTABLISHED PRECEDENT OF THIS COURT REQUIRING APPLICATION OF STATE LAW IN REVERSING A UNANIMOUS JURY VERDICT AWARDING DAMAGES PROXIMATELY RESULTING FROM DEFENDANT'S NEGLIGENCE?

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No.

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Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Ramon Ruiz, respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit to review that Court's failure to apply the law of the State of Michigan, and/or the resulting deprivation of Plaintiff's right to trial by jury due to that Court's apparent resolution of a fact question, contrary to the unanimous jury verdict entered in the cause before the District Court for the Western District of Michigan.

PROCEEDINGS BELOW

Petitioner commenced this action in the United States District Court for the Western District of Michigan-Southern Division on September 30, 1974. Jurisdiction for this action resided in the Federal Court due to 28 USC 1332 (a)(2) because of Petitioner's foreign citizenship.

The cause of action was originally filed by Petitioner against Respondent and the Lansing School District. The trial court entered an opinion and order on May 24, 1978, indicating the Defendant Lansing School District was immune from liability. The Honorable Wendell A. Miles, United States District Judge, further entered an Order on September 4, 1978, staying proceedings pending an appeal of that Decision to the Sixth Circuit Court of Appeals. In an Opinion, dated June 16, 1980, the Sixth Circuit affirmed the decision of the trial court dismissing the Lansing School District. Lansing School District henceforth has not been a party to this action and has no interest in the Appeal currently before this Court.

This cause was subsequently tried based upon allegations against Respondent before a jury commencing September 21, 1981, and concluding on September 24, 1981. Pursuant to a special verdict form, the jury determined that the injury to Petitioner was foreseeable, that Respondent was negligent and that Respondent's negligence was a proximate cause of the injuries suffered by Plaintiff (Appendix Exhibit 1).

Respondent brought a Motion for Judgment Notwithstanding the Verdict arguing that there was no duty owed to Plaintiff to protect him from the criminal acts of third persons. This Motion was denied in an Opinion dated October 26, 1981 (Appendix Exhibit 2). This Decision left standing the Judgment of the Court entered on September 29, 1981, awarding Petitioner Ramon Ruiz damages in the amount of $117,000.00 (Appendix Exhibit 3).

Respondent filed a Notice of Appeal November 20, 1981. On February 28, 1983, an Order was entered by the United States Court of Appeals for the Sixth Circuit reversing the District Court below (Appendix Exhibit 4). Petitioner timely filed a Petition for Re-hearing before the Sixth Circuit Court of Appeals, but the Motion for Re-hearing was denied by that

Court on March 31, 1983 (Appendix Exhibit 5). Ultimately, the District Court entered a Judgment N.O.V. in favor of Respondent pursuant to the Sixth Circuit Decision appealed herein. (Appendix Exhibit 6).

JURISDICTION

Jurisdiction was originally derived by 28 USC 1332 (a)(2) regarding diversity of citizenship. A jury verdict in Plaintiff's favor was reversed in an Order entered by the United States Court of Appeals for the Sixth Circuit on February 28, 1983. Petitioner seeks a Writ of Certiorari before this Court as allowed by 28 USC 1254 (1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 7 to the Constitution of the United States:

> In suits at common law, where the value and controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

28 USC 1652:

> The laws of the several states, except where the Constitution or treaties of the United States or acts of Congress otherwise require or provide, shall be regarded as rules of decision in Civil actions of the Courts of the United States, in cases where they apply.

STATEMENT OF THE CASE

This action was brought by Petitioner against Respondent based upon allegations of negligence. The negligence involved a criminal assult against Petitioner on Respondent's property. The Petitioner lost an eye and suffered other serious bodily injury. One of the major premises of Petitioner's action was the principle, well-accepted in the State of Michigan, that the owner of premises is guilty of negligence in failing to take proper precautions to protect invitees from foreseeable criminal acts of third persons.

Respondent, Defendant below, is admittedly the owner of the property in question. The property is a parking lot which adjoins the Cristo Rey Community Center and is owned and operated by Respondent.

This parking lot was maintained and used by Respondent for that purpose. A mobile classroom unit sat on the lot in close proximity to the main Cristo Rey building. The distance was estimated at approximately two car widths apart (Tr 58).

Tony Benevides was the executive director for Respondent Cristo Rey. He held that position for a number of years prior to the incident which gave rise to this action. Mr. Benevides testified that the Lansing School District was allowed to "borrow" the area in which the mobile unit was located. This arrangement was with the permission of the Diocese of Lansing to facilitate its outreach mission. Discussions toward this end were initiated by Respondent through Mr. Benevides, (Benevides Dep 6).

Mr. Benevides testified as follows with regard to the formality of the arrangement entered into:

Q. At this point, I take it, there is an agreement at least reached between the Cristo Rey people and then the Lansing School District, where they would agree to furnish this trailer?

A. That's correct.

Q. Was that agreement ever reduced to any type of writing?

A. I'm sorry?

Q. Was that agreement ever reduced to writing, any —

A. No.

Q. — papers or documents?

A. No. There was just a gentleman's agreement. We agreed for them to put it there, and — and they did, and that was it. But there was nothing in writing, and just — that's the way it was. (Tr 64).

Cristo Rey Community Center used the mobile classroom unit on an intermittent basis. Mr. Benevides indicated that when oth. parties used the facility, such as the 4-H Cooperative Extension, permission was required from both Lansing School District and Respondent Cristo Rey. (Tr 65). No rent or money was paid by either side. (Tr 65). Mr. Benevides further indicated that Cristo Rey could order the school district to remove the trailer at any time. Either side could terminate this relationship at will. (Tr 68).

Petitioner Ramon Ruiz was invited to attend English language classes occurring in the mobile classroom unit by Mr. Benevides. (Ruiz Dep 11). Announcements of the English language classes were also made by Cristo Rey in newsletters distributed in August and September of 1973. These newsletters were admitted as exhibits in the trial below. (Tr 52-54). Mr. Matheson, employee of the Lansing School District, indicated that actual registration was conducted by the Lansing School District, however, recruitment of students was a joint effort. (Matheson Dep 33).

On November 1, 1973, Ramon Ruiz was inside the mobile classroom unit with seven or eight female students. (Tr 157). At approximately eight o'clock, he witnessed a woman open

the door of the mobile unit and take a fellow student's purse. Testimony through an interpreter indicated:

Q. What did he do after the woman grabbed the handbag?

A. I got up in a hurry and I went after her.

Q. Was the door open or closed?

A. Closed.

Q. Did he open it?

A. Yes. I opened it.

Q. And which way did the door open?

A. Outside.

Q. What happened after he opened the door?

A. When I stepped out the door, I faced to the right, and I saw a bright flash of light.

Q. Did he see any persons outside?

A. No.

Q. Was it dark outside?

A. Yes. It was dark. (Tr 158-159).

The door of the mobile classroom unit opened outward to the right. Ramon Ruiz had stepped out of the mobile classroom unit and was looking around the door when he was shot in the face and body. (Ruiz Dep 15).

What had actually occurred was characterized by Defendant's Counsel as "an ambush". (Tr 111). Apparently, the individual who had stolen the purse had an accomplice lurking in the darkened parking lot outside the mobile classroom unit. When Ramon Ruiz exited the mobile classroom he was shot with a shotgun. As a result of the shotgun blast, Plaintiff sustained serious and permanent injuries including the loss of his right eye. He sustained a semi-paralysis of the left side while he was in the hospital and suffered from lack of strength in the left hand and left foot. Shotgun pellets remain under the skin of his arm and in his skull. (Tr 165, 166).

Plaintiff claimed that Respondent, as owner of the property upon which Plaintiff was injured, had a duty to render its premises safe and to protect Plaintiff from the criminal acts of third persons. Plaintiff claimed the Diocese breached these duties by failing to provide adequate lighting of the outside premises, and failing to supervise, warn, or instruct its agents and tenants to take proper safety precautions or provide proper security for individuals invited upon their property.

There was no dispute as to Petitioner's status as an invitee. As stated by the Honorable Wendell Miles in his Opinion denying Defendant's Motion for Judgment Notwithstanding the Verdict:

> "There was no dispute, and the jury was so instructed, that the Plaintiff was an invitee of the Defendant. He was invited onto the property for an educational purpose for which the property was held open to the public . . . *Although the Lansing School District did not pay rent, the educational programs operated by the school district on Cristo Rey property were publicized by the Cristo Rey Center and promoted and adopted as part of Cristo Rey's overall social service program.* Under these circumstances, the Plaintiff was an invitee of the Center, and, in fact, the Defendant did not object to the jury being so instructed." (Appendix Exhibit 2). (Emphasis supplied).

Petitioner produced testimony of the high incidence of crime in the area. Documented evidence of police calls and complaints in the area were introduced. (Tr 93). The police recognized the particular district in which this property rested as a high crime area where it was "most dangerous to our patrolmen working at that time." (Tr 92, 94)

Evidence was also introduced to show that Defendant knew of the high incidence of crime in the area and on its premises

prior to the date of the assault upon Plaintiff. Mr. Benevides testified that he felt the need to provide an additional burglar alarm system for the main building which was funded and approved in 1972. (Tr 69, 70). Mr. Benevides testified that the new alarm system was needed because of the number of breakings and enterings into the Cristo Rey Community Center which Mr. Benevides felt were being perpetrated by residents of the immediate area. (Tr 74, 75).

Petitioner introduced evidence to show that the premises were improperly lit. Foot-candle ratings at ten-foot intervals were recorded by an expert retained by Respondent. Petitioner presented this evidence to the jury. (Trombly Dep 25). An additional consulting engineer employed by Respondent, recognized standards of lighting set forth in the Illuminating Engineering Society Manual. (Cathcart Dep 7, 8). He adhered to the IES Manual in regard to the recommended minimal levels of illumination, and testified that under the standards for exterior lighting, specifically under "Entrances", the minimum average required foot-candle level of illumination was five foot-candles. (Cathcart Dep 14, 15). He also testified that under the IES Manual, the standard for parking lot areas was one or two foot-candles depending on whether it was self-parking or hired parking. He admitted under cross-examination that the illumination that was shown on the chart admitted as Exhibit D did not meet the minimum IES guidelines. (Cathcart Dep 20).

In addition to the expert testimony, there was a factual dispute as to whether or not the inadequate lighting identified above was in existence during the night of the incident in November of 1973. Through the use of an interpreter, Plaintiff testified there had been only one light on the northeast corner of the building. He further stated that it was not on a pole, nor was it the same type as exhibited in more recent pictures of the area. (Tr 162, 163). It was Plaintiff's testimony that the

area was dark and badly lit since there was only one light on the northeast corner of the main Cristo Rey building. (Tr 160).

Defendant, as owner of the premises and as landlord allowing the school district to place its unit on its property, took no additional precautions whatsoever. No modifications were made on the property to accommodate the mobile classroom. (Tr 61). In all of the discussions regarding the holding of night classes in the mobile classroom unit, the Defendant at no time discussed security measures or safety measures for its invitees. (Tr 65, 66). The Defendant never provided any safety guidelines or warned instructors or students of the numerous incidences of criminal activities in the area in which the building was located. (Matheson Dep 24, 25).

The jury returned a verdict finding that the criminal assault which occurred in this case was foreseeable by Respondent Cristo Rey. In addition, the jury determined that Respondent was negligent in failing to take reasonable precautions to protect Plaintiff from criminal assault. The jury found that the negligence of Respondent was a proximate cause of the injuries suffered by Plaintiff. (Appendix, Exhibit 1).

After the Honorable Wendell Miles denied Defendant's Motion for Judgment Notwithstanding the Verdict, an Appeal was brought to the Sixth Circuit Court of Appeals. The primary basis for this Appeal is the argument by then Defendant-Appellant that there was no duty owed to Plaintiff-Appellee Ramon Ruiz to prevent the criminal actions of third persons. The Sixth Circuit Court of Appeals reversed the decision of the trial court below totally disregarding the law of the State of Michigan, and deprived Plaintiff of a verdict rendered by an impartial jury.

JUSTIFICATION FOR GRANTING A WRIT OF CERTIORARI

I.

IN REVERSING A PROPERLY ENTERED JURY VERDICT, THE SIXTH CIRCUIT COURT OF APPEALS HAS VIOLATED MICHIGAN LAW ESTABLISHED BY THE COURTS OF THAT STATE, AND IN DOING SO HAS VIOLATED APPLICABLE DECISIONS OF THE UNITED STATES SUPREME COURT, DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

As indicated in Rule 17 of the Rules of the Supreme Court of the United States, a writ of certiorari is committed to the sound discretion of the court. Petitioner asserts that the Sixth Circuit has disregarded the law of Michigan, thus failing to properly follow the accepted course of judicial proceedings in reversing a unanimous jury verdict for Petitioner.

The principles that are being violated in this cause go to the very foundation of our judicial system. *Erie Railroad Company v Tomkins*, 304 US 64; 58 SCt 817; 82 LEd 1188 (1938) and its progeny require application of Michigan law. The dictates of *Erie* are binding upon every circuit in the United States. Failure of the Sixth Circuit to accept the dictate of Michigan law violates a clear constitutional mandate.

A further essential principle which this court must protect is Plaintiff's constitutional right to a trial by jury. In *Bird v Blue Ridge Rural Electric Cooperative, Inc.*, 356 US 525 (1958), this Court outlined some parameters for the right to a jury trial. The Federal right to a jury is guaranteed for disputed fact questions even when state law does not guarantee that right.

This principle is all the more compelling with the State of Michigan's strong policy favoring a jury determination for disputed questions of fact. The Sixth Circuit has strayed from the proper application of those principles herein. Whether through a charitable oversight or clear legal error, the Sixth Circuit has ignored established precedent of the State of Michigan and overturned a properly entered jury verdict.

Petitioner notes that the order entered by the Sixth Circuit Court of Appeals states the following which it terms "operative facts":

> "Cristo Rey Community Center was . . . a social service agency that implemented various social programs for the Hispanic speaking community in Lansing, Michigan. Illustrative of the services promoted by Cristo Rey are the following: a celebration of daily mass, senior citizen programs, a nutritional program providing approximately 7,000 meals a year, transportation, recreation for children and other age groups, and a medical clinic. The Michigan State University Department of Medicine also provided services at Cristo Rey. The United Migrant Opportunities, a subdivision of HEW, distributed food stamps from the Center. Title to the building and real estate upon which Cristo Rey implemented the described social services was in the Roman Catholic Bishop of the Lansing Diocese." (Opinion of the Sixth Circuit, Appendix D, Page 2).

It is unfortunate that the Respondent in this case is a charitable institution. The Sixth Circuit has apparently determined that the beneficient acts of Respondent entitles it to immunity not otherwise enjoyed by any non-governmental landowner. That "operative fact" does not eliminate its liability under Federal and Michigan Law for the injuries Plaintiff received from a shotgun blast to the face and body.

Save for clippings of various newspaper articles touting his heroism, Plaintiff will receive no compensation for his injuries, nor is any further recourse available save a favorable consideration by this Court. Petitioner prays this Court require that the fundamental rights guaranteed by law and Constitution be guaranteed in specific application to individuals, as well as in general pronouncement.

II.

THE DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS VIOLATES THE LAW OF THE STATE OF MICHIGAN WITH REGARD TO AN OWNER'S NEGLIGENCE TOWARDS AN INVITEE.

A. THE LAW OF THE STATE OF MICHIGAN IMPOSES A DUTY UPON RESPONDENT REGARDLESS OF ANY DETERMINATION WITH REGARD TO CONTROL.

Respondent's appeal to the Sixth Circuit was premised upon its assertion that Defendant owed no duty to prevent illegal actions of third persons. In addition, Respondent asserted that the Court erred in denying Defendant-Appellant's Motion for Judgment Notwithstanding the Verdict, which asserted primarily the same challenge.

As stated by the Sixth Circuit Court of Appeals:

> "The threshold inquiry on appeal is whether Cristo Rey was charged with a legal duty to reasonably protect Ruiz from criminal acts of third persons. There is no doubt that the answer to this threshold inquiry is affirmative." (Appendix Exhibit 4, p 4).

The Supreme Court of the State of Michigan decided this question in *Samson v Saginaw Professional Building, Inc.*, 393 Mich 393; 224 NW2nd 843 (1975). The Defendant in that case rented the fourth floor of a building to a mental clinic. The Defendant asserted that they had no knowledge that any parties frequenting the fourth floor had a propensity for violence. The court stated that:

> "Defendant leased its premises to the mental health clinic. For this act, by itself, our law imposes no liability and indeed should impose none. Whether or not the landlord retains any responsibility for actions which occur within the confines of this now leased premises is not now before this court and need not be answered. It would appear, however, that he would not retain any responsibility for such actions except in the most unusual circumstances. However, the landlord has retained its responsibility for the common areas of the building which are not leased to its tenants. The common area such as the halls, lobby, stairs, elevators, et cetera, are leased to no individual tenant and remain the responsibility of the landlord. It is his responsibility to ensure that these areas are kept in good repair and reasonably safe for the use of his tenants and invitees.
>
> The existence of this relationship between the defendant and its tenants and invitees placed a duty upon the landlord to protect them from unreasonable risk of physical harm. 2 Restatement Torts, 2d, §314A(3)."

The *Samson* court cited extensively from the *Restatement of Torts 2nd* which had been adopted by the Michigan Supreme Court in *Johnston v Harris*, 387 Mich 569, 198 NW2nd 409 (1972). In *Johnston,* the plaintiff asserted that it was reasonably

foreseeable that inadequate lighting and unlocked doors would create conditions to which criminals would be attracted when located in a high crime district. The Michigan Supreme Court applied Section 302B of the *Restatement* stating:

> "An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal. The *Johnston* court determined that a directed verdict against the plaintiff was in error. A prima facia case had been established by a plaintiff who was assaulted while reaching for the doorknob of her home in a four-unit apartment building. That plaintiff was struck and robbed by an unknown youth who was "lurking in the poorly lighted, unlocked vestibule"."
> *Supra,* Page 572.

The Michigan Supreme Court also cited Comment three to Section 302B of the *Restatement* in support of their determination that a cause of action had been made out against the owner of the apartment building. That Comment states:

> "There are however situations in which the actor, as a reasonable man, is required to anticipate and guard against the intentional, or even criminal, misconduct of others. In general, these situations arise when the actor is under a special responsibility toward the one who suffers the harm, which includes the duty to protect him against such intentional misconduct; *or where the actor's own affirmative act has created or exposed the other to a recognizable high degree of risk of harm through* such misconduct, which a reasonable man would take into account. The following are examples of such situations. The list is

not an exclusive one, and there may be other situations in which the actor is required to take precautions...

B. Where the actor stands in such a relation to the other that he is under a duty to protect him against such misconduct. Among such relations are those of carrier and passenger, innkeeper and guest, employer and employee, possessor of land and invitee, and bailee and bailor...

D. Where the actor has brought into contact or association with the other a person who the actor knows or should know to be peculiarly likely to commit intentional misconduct, under circumstances which afford a peculiar opportunity or temptation for such misconduct."
(*2 Restatement Torts,* 302B, Comment 3, pgs 90, 91) (emphasis supplied).

There can be no doubt that Respondent did act to create or expose Plaintiff to harm regardless of the control of ownership over any area of property involved. Respondent also acted to bring Plaintiff into the area where a high degree of risk of harm existed. This is borne out in the District Court Opinion denying Respondent's Motion for Judgment Notwithstanding the Verdict where the Court states:

"There was no dispute, and the jury was so instructed, that the *Plaintiff was an invitee of the Defendant.* He was invited onto the property for an educational purpose for which the property was held open to the public...Although the Lansing School District did not pay rent, the educational programs operated by the school district on Cristo Rey property were publicized by the Cristo Rey Center and promoted and adopted as part of Cristo Rey's

> overall social service program. Under these circumstances, *the Plaintiff was an invitee of the Center, and, in fact, the Defendant did not object to the jury being so instructed.*" (Appendix Exhibit 1, pgs 1, 2) (emphasis supplied).

Petitioner asserts that the relationship between Cristo Rey and Ruiz as owner and invitee charges Respondent with a legal duty sustaining the jury verdict in this case. This is true even if we assume *arguendo* that Cristo Rey had no control over the area in question. In *Samson v Saginaw Professional Building, Inc.*, *supra,* the court specifically stated that the question of an owner's liability for actions which occur within the confines of leased premises was not before the court and were not answered. *Supra,* 393 Mich 393, 407. Plaintiff asserts that Respondent's act of inviting Plaintiff to an area where there was a high degree of risk of harm, which the jury determined was foreseeable, constitutes such an "unusual circumstance" which will uphold liability in the landlord regardless of control. To argue otherwise would be to assert that an individual can invite an innocent victim into known dangerous circumstances with no worry of incurring liability for negligence. At the very least, a circumstance such as this requires a warning or such other reasonable precautions as are necessary to protect the innocent individual from harm.

B. RESPONDENT CRISTO REY WAS RESPONSIBLE FOR THE PREMISES IN QUESTION AS A MATTER OF LAW.

Petitioner further asserts that it is not necessary to rely on Petitioner's status as an invitee of Respondent. The following citation from the Sixth Circuit Court of Appeals Opinion provides the only basis with which that Court can attempt to justify reversal of the jury verdict entered in this cause. The Court states, immediately after acknowledging the status between Cristo Rey and Ruiz as landowner to invitee, that:

> "However, Cristo Rey's legal duty extended *only* to those areas over which it retained control. *Samson*, supra, 224 NW2nd at 849. See also: *Johnston v Harris*, 387 Mich 569; 198 NW2nd 409 (SC Michigan 1972). Although the agreement between Cristo Rey and the school district whereby the latter was authorized to utilize the former's land had not been reduced to writing, *the relationship between Cristo Rey and the school district compels the legal conclusion that the school district, and not Cristo Rey, was charged with the responsibility of rendering that area immediately adjacent and surrounding the mobile class unit reasonably safe.* It is conceded that the school district owned the mobile class unit here in issue which was under its exclusive control... It is obvious that Cristo Rey transferred to the school district not only the use of the land upon which the mobile unit was located, but also all areas of egress and ingress which could reasonably be anticipated to have been utilized by individuals frequenting the facility." (Appendix Exhibit 4).

The Sixth Circuit then goes on to state that the Lansing School District, previously held by that Court to be immune from liability, was charged with the legal duty to maintain and light Petitioner's parking lot areas and/or implement other reasonable measures of security.

The Sixth Circuit may be correct when it states that the Lansing School District had a duty to Petitioner similar to the one owed by Respondent. However, Petitioner knows of no rule of law or logic that requires the duty of one defendant to exclude the same duty owed by another defendant. The same logical inadequacy is perpetuated by that court's statement that:

> "...all areas of egress and ingress which could be utilized by individuals frequenting the Lansing

> School District's mobile classroom unit was under the Lansing School District's exclusive control."

This does not follow. While it may be that use of property necessarily includes areas of ingress and egress, this fact does not indicate that such an area is under the exclusive control of the person so benefitted. In fact, the parking lot was common to both parties and used by Respondent for any purpose they might choose.

Samson, relied upon by Petitioners in establishing their cause of action, is clearly contrary to the Sixth Circuit's position. The Plaintiff in that case was injured and stabbed in an elevator owned by the defendant. There is no doubt that the owner of the building also gave his tenants the right to make use of areas of ingress and egress, including elevators. The basis of liability is the negligence of the defendant with regard to common areas, or areas which the owner has the power to make safe. Failing to take precautions to protect individuals in common areas violates this legal duty.

A case even more precisely on point is *Shackett v Schwartz*, 77 Mich App 518; 258 NW2d 543 (1977). The defendant there owned a building and the land upon which it rested. A portion of the building was leased to a third party. No specific mention as to the maintenance of the parking lot around the building was made in the lease. The court noted that the landlord did not lease the entire building to the lessee, but only a portion of it. The court held that an implied reservation of control over common areas of the premises existed. That result was not changed by the fact that the lessee was the only tenant at the time. The court concluded:

> "Here, the lease is silent as to any allocation of risk. Since the lease did not transfer any right of control over the parking lot to the tenant, Kaufman, risk should remain with Schwartz, the landlord.

> JNOV should have been granted for Kaufman, since it is clear that the parking lot was a common area not under Kaufman's control."

Petitioner Ramon Ruiz was never warned of the high incidence of crime in the area. In addition, Petitioner asserted at trial that the inadequacy of the lighting in the parking lot increased the likelihood, or contributed to the existence of possible crime upon defendant's property. Petitioner was ambushed as he stepped out of the mobile classroom unit. Pursuant to *Shackett,* Respondent had control over the property where the attacker lurked, as a matter of law.

Even the necessity for control has been eliminated, or lessened under a recent decision of the Michigan Court of Appeals. In *Perry v Hazel Park Harness Raceway*, __ Mich App __; 332 NW2d 601 (Feb 83), the Court was confronted with injuries sustained in a slip and fall. That Court noted that there is no issue of 'control' when an action is brought against a possessor of land. As in *Perry*, Plaintiff presented evidence that Defendant was a possessor of the property in question. Control need not be shown, although it certainly existed in this case.

C. THE SIXTH CIRCUIT ERRED IN DETERMINING THAT FORESEEABILITY OF INJURY IS NOT A FACTOR AFFECTING THE EXISTENCE OF A DUTY.

The Sixth Circuit stated that the existence of a duty is a prerequisite to any finding of negligence. The Court then stated:

> "The existence or nonexistence of a legal duty to act is ascertained through examination of the existing underlying relationship between the parties. The foreseeability of a particular occurrence (*e.g.*,

> criminal attack) is *not* a factor in determining the existence of such legal duty. Rather, foreseeability, like reasonableness and proximate cause, are inquiries deferred to the fact finder." Citing *Samson, supra,* 224 NW2nd at 850.

This statement is clearly error under Michigan law. The *Samson* court did state that: ". . . reasonableness, as foreseeability, is normally a question for the jury to determine." While this does affirm that reasonableness and foreseeability are matters for the fact finder, there is no indication that foreseeability plays no role in the existence of a legal duty. The Michigan Supreme Court stated the exact opposite in *Moning v Alfono*, 400 Mich 425; 254 NW2d 759 (1977). The court there stated:

> "The questions of duty and proximate cause are interrelated *because the question whether there is the requisite relationship, giving rise to a duty, and the question whether the cause is so significant and important to be regarded a proximate cause both depend in part on foreseeability* — whether it is foreseeable that the actor's conduct may create a risk of harm to the victim, and whether the result of that conduct and intervening causes were foreseeable." *Supra,* 254 NW2d 759 at 765.

The jury has determined that the criminal assualt which occurred in this case was foreseeable and that Defendants were negligent in failing to take reasonable precautions to protect Petitioner from that assault.

The Michigan Court of Appeals further addressed the duty issue in *Robertson v Swindell-Dressler Co.*, 82 Mich App 382; 267 NW2d 131 (1978). The court applied the principles of *Moning* to defendant who had designed a plant and conveyor system upon which the plaintiff had been injured. The court stated:

> "The controversy between the parties as to whether plaintiff was within the foreseeable scope of risk

> from the conveyor system falls under the *Moning* Court's definition of 'duty'. If plaintiff was foreseeable, a sufficient relationship was created, giving rise to the 'legal obligation on the actor's part for the benefit of the injured person'."

The law of Michigan compels the conclusion that Respondent was in control of the area in question as a matter of law. The proofs disclose without question that the criminal act took place in the parking lot which was under the joint and/or exclusive control of Respondent Cristo Rey. Certainly no judicial sophistry supports the conclusion that Respondent had no duty as a matter of law. At best, the interrelationship of foreseeability, and facts regarding control, requires a jury verdict.

III.

THE SIXTH CIRCUIT COURT OF APPEALS DECLARATION THAT RESPONDENT IS NOT LIABLE IN NEGLIGENCE DEPRIVES PLAINTIFF OF HIS CONSTITUTIONAL RIGHT TO A JURY DETERMINATION OF DISPUTED MATTERS OF FACT.

Petitioner asserts that control over the inside of the mobile classroom unit is irrelevant to this action. The attacker in this circumstance was lying in wait in the darkened parking lot under the exclusive and/or joint control of Respondent Cristo Rey. Petitioner's specific location at the time he was shot should not affect the ultimate result. Even so, uncontradicted evidence in the record establishes that Petitioner was shot outside the mobile classroom unit.

> Q. After she ran out, what happened?
> A. I got up and ran out after her.

Q. What did the other students do?

A. They ran after him. I'm sorry, I did that in the wrong person.

Q. Were there any other men in the classroom?

A. The professor.

Q. What happened after you ran after her?

A. When I opened the door, I saw a light as a flash.

Q. Were you the first one to the door?

A. I was the first.

Q. Did the door open to the outside?

A. Yeah, out.

Q. And what type of door was it?

A. I don't remember what material it was.

Q. Was it wood?

A. I think so. It was maybe wood.

Q. Was there a window in it?

A. It had a little window in it.

Q. When you saw the bright flash, was the door still open?

A. Yes.

Q. Was any part of your body behind that door?

A. All of my body except from here up (indicating) was out — was — how do I do this?

MR. WARD: You just did it.

THE INTERPRETER: He indicated that all of his body was outside the door except from where he indicated.

Q. (By Mr. Hay): From your chest up?

A. From here up (indicating).

Q. *Were you looking around the door?*

A. Yes.

Q. Were you looking toward Ballard Street?

A. Yes. Yes, toward Ballard Street.

Q. Before the bright flash, did you see anybody?

A. Nothing.

Q. Did you know what the bright flash was?

A. Not at first. I didn't know what it was.

Q. What happened after the bright flash?

A. *My classmate screamed to get inside and my face was bleeding badly.*

Q. Did you go back inside the classroom?

A. Yes. (Ruiz Dep 14, 15).

The door of the mobile classroom unit opened outward to the right. The only reasonable inference which can be taken from these facts, including Ramon's testimony that he faced around the door to the right, was that his body was outside of the mobile classroom unit.

There is no doubt that the church could have lit the area to any degree they may have chosen. There has been no assertion or evidence to indicate that they failed to retain control over outside lighting. In fact, the testimony of William Matheson, Jr., employee of the Lansing School District, indicates the opposite fact. Mr. Matheson taught classes at the mobile classroom unit for the Lansing School District. He stated:

> "We had no control over any lighting outside of the building." (Matheson Dep 28).

In addition, Mr. Benevides testified with regard to control over outside lighting. He was asked who furnished the lighting "in and on the outside, or perimeters of Cristo Rey Center". He answered, "We do". (Tr 144).

Even control over the interior of the mobile classroom presented a fact question. The executive director of Cristo Rey Community Center, Mr. Benevides, merely stated that the Lansing School District had borrowed the land upon which the classroom sat with the permission of the Diocese. (Tr 51). He further stated that the parties "just agreed to put it there". (Tr 64). There were absolutely no restricitions on

removing the trailer placed upon either party. (Tr 68). Interrogatories to the Defendant were read to the jury. Answer number seven to these interrogatories indicated that while the Lansing School District had priority use for the interior of the classroom, *Cristo Rey could use it during vacant times*. The jury reasonably concluded that Respondent Cristo Rey had sufficient control over the interior of the mobile classroom unit making them liable for negligence that proximately caused Petitioner's injuries.

The Sixth Circuit states there was no duty on the part of Cristo Rey towards Petitioner in this instance. The alleged insufficiency of Petitioner's case is premised upon a lack of control by Defendant over the ability to maintain and/or implement other reasonable measures of security. The facts directly contradict any assertion that the Lansing School District had exclusive control over any aspects of what is admittedly Respondent's premises. There can be no question that the exterior premises were common areas under the control of Defendant. Even with regard to the interior premises Defendant exercised a degree of control.

If facts are undisputed, then duty is a matter of law rather than fact. Even if facts are viewed most favorable to Defendant, a duty has been made out. However, Petitioner need not rely upon facts made out in favor of Defendant when he has the benefit of a favorable jury verdict. Sufficient evidence was introduced to indicate that the Lansing School District exercised control over the interior and exterior areas involved. While the finder of fact might determine evidence submitted with regard to the Defendant's control against Plaintiff, this determination would be for the finder of facts.

In *Samson v Saginaw Professional Building, Inc.*, the court stated that:

> "We prefer to recognize and uphold that duty in these types of relationships, leaving it to the jury to

> determine the ultimate question which may impose liability, those of foreseeability, reasonableness and proximate cause."

It is a policy of Michigan courts to find a duty and allow the jury to determine fact questions whenever possible.

In *Farwell v Keaton,* 396 Mich 281, 240 NW2nd 217 (1976) the court stated:

> "The existence of a duty is ordinarily a question of law. However, there are factual circumstances which give rise to a duty. The existence of those facts must be determined by a jury." 240 NW2d at 219.

That court further cited the Michigan Supreme Court decision of *Davis v Thornton,* 384 Mich 138, 142; 180 NW2d 11, 13 (1970) and stated:

> "The trial judge in this case determined the defendant owed the plaintiff no duty. We believe this conclusion could properly be made only by a jury."

In *Graham v Joseph T. Ryerson & Sons,* 96 Mich App 773, 292 NW2d 704 (1980) the court was confronted with a judge who had determined that no duty existed in a negligence action. That court stated:

> "Since we are not presented with the question of obvious danger, we proceed to consider whether the trial court could properly remove the issue of duty to warn from the jury on the basis of plaintiff's knowledge of the particular risk. Although the question of duty is generally for determination by the trial court as a matter of law, the jury should examine the issues pursuant to proper instructions, when the facts produced at trial are in dispute, giving rise to a reasonable difference of opinion as to the foreseeability of the particular risk and the reasonableness

> of defendant's conduct in that regard." *Supra,* 292 NW2d at 707-708 citing *Robertson v Swindell-Dressler Co.,* 82 Mich Ap 382; 267 NW2d 131 (1978), leave denied 403 Mich 812 (1978). Relying on Prosser, Torts (4th Ed) Section 37, Page 206 and Section 45, Page 290.

Finally, the Michigan Supreme Court stated in *Nichol v Billot,* 402 Mich 284; 279 NW2d 761 (1979) that:

> "It is a basic proposition of law that determination of disputed issues of fact is peculiarly the jury's province. *Wight v H.G. Christman Co.,* 244 Mich 208, 211; 221 NW 314 (1928). Even where the evidentiary facts are undisputed, it is improper to decide the matter as one of law if a jury could draw conflicting inferences from the evidentiary facts and thereby reach differing conclusions as to ultimate facts." *Supra,* Page 767 (Citations omitted).

The Sixth Circuit Court of Appeals made determinations of fact with regard to control. These facts were in dispute before the jury. There was no acknowledgment of any exclusive control by the Lansing School District on the part of Petitioner. Much of the evidence that was presented dealt with the control which Respondent Cristo Rey exercised over the interior and exterior of the mobile classroom unit. The Sixth Circuit's declaration that the mobile classroom unit as well as any areas used by the Lansing Schoool District to enter or exit the unit were within the Lansing School District's exclusive control is logically and factually incorrect. Such a declaration usurps Plaintiff's recognized right to a jury trial in violation of the Constitution of the United States, as well as the Constitution of the State of Michigan.

CONCLUSION

The evidence presented at trial justifies ruling as a matter of law that Respondent was under a duty to exercise due care and to prevent harm or injury to Petitioner. This is established either through the status which Petitioner held as invitee of Respondent, or as a result of Petitioner's injuries suffered as an invitee on areas over which Respondent exercised control in common with the Lessee.

Even assuming arguendo that duty is not shown as a matter of law, a fact question is presented with regard to control and foreseeability. The law of Michigan and the United States indicates that a jury determination over these disputed questions of fact is required. The Sixth Circuit Court of Appeals declaration of "exclusive control" is contrary to law and fact. This clearly deprives Petitioner of his right to a jury trial. A Writ of Certiorari is justified and should be issued to that Court.

Respectfully submitted,

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APPENDIX

APPENDIX 1

(Filed: September 24, 1981)

SPECIAL VERDICT FORM

1. Was the criminal assault which occurred in this case foreseeable as that term was defined to you by the court?

Yes X No____

If your answer is no, do not answer any further questions.

2. Were the defendants negligent in failing to take reasonable precautions to protect the plaintiff from a criminal assault?

Yes X No____

If your answer is no, do not answer any further questions.

3. Were the defendants a proximate cause of the injuries suffered by the plaintiff?

Yes X No____

If your answer is no, do not answer any further questions.

4. We find that the plaintiff has suffered damages in the total amount of $117,000.

5. Did negligence on the part of the plaintiff, if any, contribute to his own injuries?

Yes____ No X

6. Using 100% as the total combined negligence which proximately caused the injury or damage to the plaintiff, what percentage of such negligence is attributable to the plaintiff?

0% percent

The Court will reduce the total amount of plaintiff's damages as found by the jury in Question #4, by the percentage of

negligence attributable to plaintiff, if any, from Question #6. The remainder will be the amount which plaintiff is entitled to recover.

Signed: NICK UNGER
Foreperson

Dated: September 24, 1981

APPENDIX 2
(Filed: October 26, 1981)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

RAMON RUIZ,
Plaintiff,

vs. No. G 74-350 CA

CRISTO REY COMMUNITY CENTER,
Defendant.

OPINION ON DEFENDANT'S MOTION FOR J.N.O.V.

Following a jury verdict in favor of the plaintiff, the defendant has moved for judgment notwithstanding the verdict on the ground that the defendant owed no duty to protect the plaintiff from the criminal acts of third persons. The motion for J.N.O.V. must be denied if the evidence before the jury, read in a light most favorable to the plaintiff, was sufficient to support a verdict in favor of the plaintiff.

There was no dispute, and the jury was so instructed, that the plaintiff was an invitee of the defendant. He was invited

onto the property for an educational purpose for which the property was held open to the public. The fact that he was standing in the doorway of a mobile classroom building owned by the Lansing School District is irrelevant to his status vis-a-vis the defendant:

> Invitees of the tenant are regarded as being invitees of the owner while on passageways which invitees of the tenant have a right to use and which are under the owner's control.

Siegel v. Detroit Ice & Fuel Co., 324 Mich. 205 (1949); *Lipsitz v. Schechter*, 377 Mich. 688 (1966). Although the Lansing School District did not pay rent, the educational programs operated by the School District on Cristo Rey property were publicized by the Cristo Rey Center and promoted and adopted as part of Cristo Rey's overall social-service program. Under these circumstances, the plaintiff was an invitee of the Center, and, in fact, the defendant did not object to the jury being so instructed.

The defendant, under Michigan law, owed an invitee, such as the plaintiff, a duty to take reasonable precautions to protect the plaintiff from foreseeable criminal attacks by third persons.

> There are, however, situations in which the actor, as a reasonable man, is required to anticipate and guard against the intentional, or even criminal misconduct of others. In general, these situations arise where the actor is under a special responsibility toward the one who suffers the harms, which includes the duty to protect him against such intentional misconduct . . . Among such relations are those of a carrier and passenger, innkeeper and guest, employer and employee, *possessor of land and invitee*, and bailee and bailor.

[emphasis added]. *Samson v. Saginaw Professional Building, Inc.*, 393 Mich. 393, 224 N.W. 2d 843 (1975), quoting Restatement of Torts 2d, Comment 3, p. 90-91, § 302B.

Given that a duty to take reasonable precautions existed in this case, whether that duty was breached is a jury question.

> We prefer to recognize and uphold that duty in these types of relationships, leaving it to the jury to determine the ultimate questions which may impose liability, those of foreseeability, reasonableness and proximate cause.

Samson, supra.

There was sufficient evidence from which the jury could decide that the criminal act in this case was foreseeable. The assault was precipitated by a breaking and entering and purse-snatching. There was evidence that numerous such occurrences had taken place in the three years prior to the incident in this case. The Cristo Rey Center had installed an alarm system, which indicated its knowledge of the problem.

There was evidence sufficient to support a jury conclusion that the defendant failed to take reasonable precautions. The evidence showed that no special precautions were taken to protect those persons attending class in the mobile classroom building. Most significantly, the defendant did not warn the School District, the classroom teacher, or the students themselves of a crime problem of which the defendant was aware.

The jury could also have reasonably concluded that the defendant's failure to warn or take other precautions was a proximate cause of the attack which injured the plaintiff. The failure to warn may have created a situation, i.e. an unlocked door with valuable possessions placed, unguarded, nearby, which significantly increased the likelihood of the commission

of a crime and, consequently, an assault during such commission. Where a defendant's conduct has enhanced the likelihood of a foreseeable criminal act, that conduct may be considered a proximate cause of the criminal act. *Johnston v. Harris*, 387 Mich 569, 198 N.W. 2d 409 (1972).

The defendant relies principally on the Michigan Court of Appeal's case of *Escobar v. Brent General Hospital*, __ Mich. App __ (1980), decided 6-4-81. However, the Escobar case, relying as it does on the allegedly "unforeseeable" nature of criminal conduct, is simply at odds with the Michigan Supreme Court in *Samson*. The issue of foreseeability, which is the crucial issue in every case of this nature (see discussion in *Johnston v. Harris*, supra), is a question of fact for the jury under *Samson*. Criminal acts are not, as a matter of law, unforeseeable, according to the Michigan Supreme Court. Given a conflict between the Michigan Supreme Court and one panel of the Michigan Court of Appeals, this court is governed by the Supreme Court decision in *Samson*.

For the foregoing reasons, the defendant's motion for J.N.O.V. must be, and hereby is, DENIED.

/s/ WENDELL A. MILES
Wendell A Miles
Chief Judge

Dated: October 23, 1981

APPENDIX 3
(Filed: September 29, 1981)

JUDGMENT ON JURY VERDICT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAMON RUIZ,

vs.

CRISTO REY COMMUNITY CENTER,
JAMES SULLIVAN

Civil Action File
No. G74-350 CA

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Wendell A. Miles Chief, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the plaintiff, Ramon Ruiz, recover of the defendants Cristo Rey Community Center and James Sullivan, the sum of One Hundred Seventeen Thousand and no/100 ($117,000.00) Dollars, with interest thereon as provided by law, and his costs of action.

Dated at Grand Rapids, Mich., this 29th day of Sept., 1981.

Gerald H. Liefer, Clerk

/s/ _____
Chief Deputy Clerk of Court

APPENDIX 4

(Filed: February 28, 1983)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RAMON RUIZ,
Plaintiff-Appellee

vs. No. 81-1751

CRISTO REY COMMUNITY CENTER, et al.
Defendants-Appellants

ORDER

BEFORE: MARTIN and KRUPANSKY, Circuit Judges; and PECK, Senior Circuit Judge

Ramon Ruiz (Ruiz) initiated this negligence diversity action against the Lansing School District (School District) and Cristo Rey Community Center of the Catholic Diocese of Lansing (Cristo Rey) for damages to compensate him for injuries resulting from a criminal attack upon him by a third party. The attack occurred inside, or at the immediate threshhold, of a doorway into a mobile classroom unit owned and operated by the School District and located on land made available to it by Cristo Rey. The School District's motion for summary judgment, predicated upon sovereign immunity, was granted by the district court. Subsequent to a five-day jury trial a verdict was returned in favor of Ruiz and judgment was entered thereon. Cristo Rey moved for judgment notwithstanding the verdict (JNOV), asserting that it owed no legal duty to protect Ruiz from the unforeseeable criminal acts

of third persons. Cristo Rey appeals from the Order of the district court denying its motion for JNOV.

The evidence presented at trial disclosed the following operative facts. Cristo Rey Community Center was defined by its Executive Director, Tony Benevides (Benevides), as a social service agency that implemented various social programs for the Hispanic speaking community in Lansing, Michigan. Illustrative of the services promoted by Cristo Rey are the following: a celebration of daily mass, senior citizens programs, a nutritional program providing approximately 7,000 meals a year, transportation, recreation for children and other age groups, and a medical clinic. The Michigan State University Department of Medicine also provided services at Cristo Rey. The United Migrant Opportunities, a subdivision of HEW, distributed food stamps from the Center. Title to the building and real estate upon which Cristo Rey implemented the described social services was in the Roman Catholic Bishop of the Lansing Diocese.

At some time in the late 1960s, the Lansing School District inaugurated English classes for Hispanics at Cristo Rey. When the English language classes became too large for the School District's existing facility, it placed, with Cristo Rey's consent, a mobile classroom unit which it owned onto the Cristo Rey property.

Registration for the English language classes was conducted at the Education Center operated by the Lansing School District and located at 500 West Lenawee. Cristo Rey did not participate in the registration process. Cristo Rey did, however, from time to time, include announcements of the availability of the classes in its monthly newsletter. Benevides had informed Ruiz of the availability of the language classes.

On November 1, 1973, plaintiff Ruiz was attending an English class which was being conducted by the School in its

mobile classroom situated on the Cristo Rey property. One male instructor and approximately 8 other students, all female, were present. The students were gathered around a table. At approximately 8 p.m., by which time darkness had settled, Ruiz observed a woman enter the unit and snatch a handbag from a table and hurriedly leave the premises. He gave pursuit and as he opened the door he was confronted by a bright flash of light from the discharge of a shotgun. Ruiz, struck by the charge, staggered to the rear of the classroom and collapsed under a table. Medical attention was summoned. Ruiz' injuries included the loss of sight in one eye.

Ruiz predicated his cause of action upon negligence, charging Cristo Rey, as the owner of land, with a duty to render its premises reasonably safe for the use of invitees. Particularly, Ruiz averred that an unreasonable risk of harm from criminal activity was foreseeable and that Cristo Rey had breached its duty to exercise reasonable care to adequately protect invitees of the School District and that such breach of duty proximately caused his injury.

The threshhold inquiry on appeal is whether Cristo Rey was charged with a legal duty to reasonably protect Ruiz from criminal acts of third persons. In *Samson v. Saginaw Professional Building, Inc.*, 393 Mich. 383, 224 N.W. 2d 843 (S.C. Mich. 1975), the Supreme Court of Michigan held that no negligence shall arise unless a legal *duty* to act exists. The existence or non-existence of a legal duty to act is ascertained through examination of the existing *relationship* between the parties. The foreseeability of a particular occurrence (*e.g.* criminal attack) is *not* a factor in determining the existence of such legal duty. Rather, foreseeability, like reasonableness and proximate cause, are inquiries deferred to the factfinder. *Samson, supra,* 224 N.W. 2d at 850. The relationship between Cristo Rey and Ruiz as land owner to invitee charged the former with a legal duty to render certain areas reasonably safe. However, Cristo

Rey's legal duty extended *only* to those areas over which it retained control. *Samson, supra,* 224 N.W. 2d at 849. *See also*: *Johnston v. Harris,* 387 Mich. 569, 198 N.W. 2d 409 (S.C. Mich. 1972). Although the agreement between Cristo Rey and the School District whereby the latter was authorized to utilize the former's land had not been reduced to writing, the relationship between Cristo Rey and the School District compels the legal conclusion that the School District, and not Cristo Rey, was charged with the responsibility of rendering that area immediately adjacent to and surrounding the mobile class unit reasonably safe. It is conceded that the School District owned the mobile class unit here in issue which was under its exclusive control. The School District alone (1) provided all instructors, (2) supplied all utilities, (3) provided its own independent telephone service; (4) implemented its own custodial services and (5) installed its own restroom separate from Cristo Rey's facilities. It is obvious that Cristo Rey transferred to the School District not only the use of the land upon which the mobile unit was located, but also all areas of egress and ingress which could reasonably be anticipated to have been utilized by individuals frequenting the facility. The School District, and not Cristo Rey, assumed responsibility for the safety of pupils both inside the mobile unit and in those areas immediately contiguous to and surrounding the unit. The School District was charged with the legal duty to maintain and light these areas and/or implement other reasonable measures of security.

Upon adjudging that Cristo Rey had no legal duty to render the area inside of and immediately contiguous to the mobile class unit reasonably safe for invitees of the School District, it is unnecessary for this Court to address the sufficiency of evidence supporting the jury finding that the criminal attack was foreseeable, that Cristo Rey failed to

reasonably protect Ruiz from such a criminal attack, and that such failure proximately caused plaintiff's injuries.

The judgment of the district court is REVERSED, and this action is REMANDED with instructions to enter final judgment in favor or Cristo Rey.

ENTERED BY ORDER OF THE COURT
JOHN P. HEHMAN, CLERK

/s/ JOHN P. HEHMAN

APPENDIX 5
(Filed: March 31, 1983)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMON RUIZ,
Plaintiff-Appellee

v. No. 81-1751

CRISTO REY COMMUNITY CENTER, et al.
Defendants-Appellants

ORDER

BEFORE: MARTIN and KRUPANSKY, Circuit Judges; and PECK, Senior Circuit Judge

Upon due consideration, Ramon Ruiz' instant motion for rehearing is hereby DENIED.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX 6

(Filed: May 2, 1983)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAMON RUIZ,
Plaintiff,

vs.

CRISTO REY COMMUNITY CENTER, et al.
Defendants.

File No.
G74-350 CA 5

JUDGMENT ON REMAND

The United States Court of Appeals for the Sixth Circuit having reversed this court's denial of the defendant's motion for judgment n.o.v. and remanded the action; now, therefore,

IT IS HEREBY ORDERED that the judgment of this court entered on September 29, 1982, be vacated;

IT IS FURTHER ORDERED AND ADJUDGED that a judgment n.o.v. be entered and that the plaintiff take nothing.

ENTERED BY ORDER OF THE COURT

/s/ GERALD H. LIEFER
Gerald H. Liefer, Clerk

Date: May 2, 1983.